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In re Application of	:	
SEBILEAU, Vincent	:	
U.S. Application No.: 09/719, 464	:	DECISION ON PETITION TO
PCT No.: PCT/FR99/01246	:	REVIVE UNDER 37 CFR
International Filing Date: 27 May 1999	:	1.137(a)
Priority Date: 28 May 1998	:	
Attorney's Docket No.: OUVBOC	:	
For: UTENSIL FOR OPENING CONTAINERS WITH	:	
SCREWED LIDS	:	

This decision is issued in response to applicants' "Petition To Revive Under 37 CFR 1.137(a)" filed on 17 September 2001. Applicant has paid the required small entity petition fee.

### **BACKGROUND**

On 27 May 1999, applicant filed international application PCT/FR99/01246 which claimed a priority date of 28 May 1998 and which designated the United States. On 02 December 1999, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

On 22 December 1999, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 28 November 2000.

On 08 December 2000, the USPTO received a submission from applicant seeking to enter the national stage in the United States accompanied by, among other materials, payment of the small entity basic national fee and a translation of the international application into English.

On 23 January 2001, the USPTO mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned with respect to the United States based on applicant's failure to submit the basic national fee within thirty months of the priority date (i.e., before 28 November 2000).

On 17 September 2001, applicants filed the "Petition To Revive Under 37 CFR 1.137(a)" considered herein. In this petition, applicant argues that the delay in submitting the basic national fee was unavoidable in that it resulted from the failure of an international delivery company to timely deliver the application papers to the USPTO.

### DISCUSSION

Under 37 CFR 1.137(a), a petition requesting that the application be revived on the grounds of unavoidable delay must be filed promptly after applicant becomes aware of the abandonment, and such petition must be accompanied (1) by an adequate verified showing of the cause of unavoidable delay, (2) by a proper response, unless already filed, (3) by the petition fee required by law, and (4) by a terminal disclaimer (if necessary). Applicants have satisfied items (2)-(3) above, and item (4) is not applicable. However, as discussed below, applicant's have failed to satisfy item (1).

One of the requirements for a grantable petition under 37 CFR 1.137(a) is an adequate showing that the entire delay in filing the required reply was unavoidable. Section 711.03(c)(2), of the Manual of Patent Examining Procedure ("M.P.E.P.") states the following:

Decisions on reviving abandoned applications on the basis of 'unavoidable' delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. ...

Here, applicant has presented evidence demonstrating that the materials filed to initiate this national stage application were deposited with "the French post office's special delivery service Chronopost International" on 20 November 2000 (eight days prior to the expiration of the thirty month deadline). Applicant states that Chronopost International guarantees delivery within three days; such delivery would have made the national stage papers timely, with days to spare. However, Chronopost International did not make the guaranteed delivery. Rather, on 04 December 2000, the package was returned to applicant with an apology and a refund. Applicant remailed the materials on 05 December 2000 and these materials, as noted above, were received at the USPTO on 08 December 2000.

If properly supported, the asserted facts would justify a conclusion that applicant acted as a "reasonably prudent person" in depositing the application materials with Chronopost International on 20 November 2000 for delivery to the USPTO, and that the failure of these materials to arrive in a timely manner was therefore unavoidable. However, the present submission does not include sufficient evidence of all the determinative facts. Specifically, applicant has provided no support for the assertion that Chronopost International guarantees international delivery within three days. Applicant must submit evidence of such guarantee, preferably in materials generated by Chronopost International, before a conclusion can be reached with respect to the reasonableness of applicant's actions. Until such evidence is submitted, item (1) above is not satisfied.

Regarding item (2), the proper response was submission of the national stage materials, and specifically the basic national fee. These materials were filed by applicant on 08 December 2000. Item (2) is satisfied.

The present petition included the required small entity petition fee. Accordingly, item (3) is satisfied, and, as noted above, item (4) does not apply here.

Because applicant has failed to satisfy all the requirements for a grantable petition under 37 CFR 1.137(a), the petition cannot be granted at this time.

Finally, it is noted that, among the materials filed on 08 December 2000 was one page of an inventor's declaration (Form PTO/SB/01). However, the remaining pages of this declaration (including the page on which the applicant would have executed the declaration) are not present in the application file. Accordingly, a complete and executed declaration in compliance with 37 CFR 1.497 has not yet been submitted.

### CONCLUSION

The petition to revive the application with respect to the United States under 37 CFR 1.137(a) is **DISMISSED** without prejudice. The application remains abandoned with respect to the United States.

Applicants have **TWO (2) MONTHS** from the mail date of this decision in which to submit a proper response. As discussed above, such a response must include evidence that Chronopost International guarantees international delivery within three days.

In the alternative, applicant might consider filing a petition to revive the application under 37 CFR 1.137(b) (the provision for applications abandoned unintentionally, rather than unavoidably). The evidentiary requirements for such a petition are less stringent than those applied under 37 CFR 1.137(a).

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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